

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4886 of 1981

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DHARAMRAJ SATYANARAYAN

Versus

REGIONAL DIRECTOR

Appearance:

MR NR TANDEL for Petitioner
MR SR SHAH for Respondent No. 1
SERVED for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 21/11/97

ORAL JUDGEMENT (Per K.Sreedharan CJ):

Petitioner -a permanent employee working in Ambica Mills Co.Ltd, Ahmedabad- was insured under the Employees State Insurance Scheme. His monthly remuneration was about Rs.600/-. On 21-3-1980 he met with an accident in the course of his employment within

the premises of the Mill Co. and lost one phalank of his right thumb. The Medical Board assessed the percentage of loss of earning capacity at 20% . The permanent disability was consequently computed at Rs.2.50 per day. It means that the petitioner was found entitled to compensation at the rate of Rs.2.50 per day during his life time. A permanent disablement benefit at the rate of Rs.2.50 per day should have been commuted as a lumpsum payment. This was not done by the Corporation. The Corporation relied on Regulation 76-B of the Employees' State Insurance (General) Regulations, 1950 (hereinafter referred to as the Regulations) in support of their stand that the petitioner is not entitled to commutation on the basis of periodical disablement benefit because the benefit exceeds Rs.1.50 per day fixed thereunder.

The main argument advanced by the learned advocate representing the petitioner, is that the denial of benefit of commutation to persons who get permanent disablement benefit exceeding Rs.1.50 per day is arbitrary. On this basis he prayed for issuance of a writ of mandamus directing commutation of disablement benefit of the petitioner at the rate of Rs.2.50 per day and to pay a sum of Rs.12,000/- as lumpsum grant.

The petitioner has produced a statement showing comparison of Consumer Price Index number and amount of Dearness Allowance in Ahmedabad and Bombay from 1940 to 1981. The Consumer Price Index in 1940 was 79 and the amount of dearness allowance payable in that year at Ahmedabad was Rs. 1.99. In 1981, the Consumer Price Index rose to 1306. Therefore, there should have been corresponding increase in the amount of dearness allowance as well. The learned Counsel argued that commutation of disablement benefit was allowed on Rs.1.50 in 1950. The same commutation could not have been continued in 1981 when the petitioner was to get his disablement benefit computed. In 1950 the Consumer Price Index was at 259 and the Dearness Allowance was 71.39. In 1978 they became 1011 and 360.61 respectively. So the commutation of disablement benefit in 1981 should have been proportionally increased and respondents were not justified in denying such commutation on the ground that commutation of the benefit of above Rs.1.50 per day is impermissible.

On behalf of the Employees State Insurance Corporation, a detailed reply has been filed. The stand taken therein is that as per Regulation 76-B of the Regulations disablement benefit upto Rs.1.50 per day alone can be commuted. The petitioner having been

awarded disablement benefit at the rate of Rs.2.50 he is not entitled to a lumpsum grant on commutation. Disablement of the petitioner was assessed at 20% and the daily rate of permanent disablement benefit worked out to be Rs.2.50 because petitioner's daily wage was found to be Rs.12.50.

Section 62 of the Employees' State Insurance Act, 1948 provides that no person shall be entitled to commute for a lump sum any disablement benefit admissible under the Act other than as may be provided in the Regulations. Section 97 empowers the Corporation to make Regulations. Clause (xi) of Sub-section (2) of Sec.97 enjoins the Corporation to make rules laying down the method of calculating the amount of cash benefit payable and the circumstances in which and the extent to which commutation of disablement and dependant's benefits may be allowed. It also authorises the Corporation to frame rules regarding the method of calculating commutation value. In exercise of the powers under section 97(2)(xi) the Corporation framed Regulation 76-B for giving effect to the provisions contained in Section 62 of the Act. Regulation 76-B is relevant for the purpose of this case. It reads:

76-B. Commutation of small periodical payments of permanent disablement benefits. - (1). An insured person whose permanent disablement has been assessed as final and who has been awarded permanent disablement benefit at a rate not exceeding Rs.1.50 per day may apply for commutation of the periodical payments of permanent disablement benefit into a lump sum:

....."

Rs.1.50 mentioned therein was incorporated in that Regulation by Notification No.N-12/13/8/77-P&D dated 28-11-1977. On going through the entire provisions of the Act and the Regulations we could not find out any connection between the Consumer Price Index and the Dearness Allowance on one hand and the commutation of disablement benefit provided in the Regulations on the other. In such a situation, we do not find our way to test the validity or otherwise of the limit fixed in the Regulations on the basis of the variable Consumer Price Index.

If the argument advanced by the petitioner that variable Consumer Price Index has a relevance in fixing the limit for commutation of the disablement benefit, the consequence will be to strike down the limit fixed in

Section 76-B of the Regulations. If that limit is found to have been fixed arbitrarily, then the petitioner will not be benefitted. This is more so when it is seen that this Court in exercise of the powers under Article 226 of the Constitution cannot have another limit fixed for the purpose of commutation. Fixation of limit for the purpose of commutation can only be done on the policy decision to be taken by the Corporation. The policy decision of the Corporation cannot be substituted by the High Court. In view of this fact, the limit fixed in Regulation 76-B of the Regulations at Rs.1.50 is not to be interfered with.

The learned Counsel representing the respondents brought to our notice the amendment brought to Regulation 76-B in 1991. That Regulation 76-B after amendment dated 15-6-1991 reads:

76-B. Commutation of Permanent disablement benefit.

(1). An insured person whose permanent disablement has been assessed as final and who has been awarded permanent disablement benefit at a rate not exceeding Rs.1.50 per day may apply for commutation of permanent disablement benefit into a lumpsum:

Provided that the insured person whose permanent disablement has been assessed as final and the benefit rate exceed Rs.1.50 per day may also apply for commutation of permanent disablement benefit into lumpsum subject to the conditions that the total commuted value of the lumpsum permanent disablement benefit does not exceed Rs.1,000/- at the time of commencement of final award of his permanent disability. "

By this amendment the maximum commuted value of the disablement benefit cannot exceed Rs.10,000/-. In 1991 when the above amendment was brought into effect Consumers Price Index was much more than that in 1977. Even so commutation value has been limited at Rs.10,000/-. That decision, based on the policy adopted by the Corporation, is not to be interfered with.

Since we do not find any ground to interfere with

the rate of disablement benefit which entitles commutation, we are not in a position to find any illegality in the action of the respondents in rejecting petitioner's claim to allow commutation of disablement benefit which was fixed at Rs.2.50 per day.

This petition is devoid of any merit and we dismiss the same. Rule is discharged with no order as to costs.

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sharma